

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:05CV238-C**

**ANITA POTHIER, et. al., On Behalf of)
Themselves and All Others Similarly)
Situating ,)**

Plaintiffs,)

vs.)

**BANK OF AMERICA CORPORATION,)
et. al.,)**

Defendants.)

ORDER OF RECUSAL

THIS MATTER is before the Court sua sponte, following the receipt of a letter, dated July 22, 2005, from the Plaintiffs' counsel requesting a status conference.

This matter was recently referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B).

Upon careful review of the record, however, particularly the "Memorandum and Order" entered by the Honorable G. Patrick Murphy, Chief United States District Judge, United States District Court for the Southern District of Illinois, on May 16, 2005 (document #108 in Southern District of Illinois File No. 04-458) (granting the Defendants' Motion to Transfer Venue to the Western District of North Carolina), it is apparent that the undersigned has a conflict of interest that precludes his further involvement with this matter.

Specifically, this is an action brought by the Plaintiffs, on behalf of themselves and a purported Plaintiff class consisting of more than 111,800 employees of the Defendant Bank of

America Corporation, challenging the calculation of their retirement benefits. Moreover, Judge Murphy transferred venue of this matter to the Western District of North Carolina in part because the largest concentration of potential class members, that is, current Bank of America employees, work and reside in this district. However, the undersigned's daughter has been and continues to be a Bank of America employee, is a participant in Bank of America's employee benefits program, including its retirement plan, and, therefore, is a potential member of the purported Plaintiff class with a direct financial interest in the outcome of this litigation.

Accordingly, the undersigned has an unavoidable conflict of interest and must recuse himself from this matter.

NOW, THEREFORE, IT IS ORDERED:

1. The undersigned **RECUSES** himself from further involvement in this litigation, and the Clerk is directed to terminate the referral in this matter.

2. The Clerk is further directed to send copies of this Order to counsel for the parties; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: July 25, 2005

Carl Horn, III

Carl Horn, III
United States Magistrate Judge

